

Electronically Filed on May 3, 2010

1 BRAD ERIC SCHELER (SBN BS-0397)
 2 BONNIE STEINGART (SBN BS-8004)
 3 **FRIED, FRANK, HARRIS,
 4 SHRIVER & JACOBSON LLP**
 5 One New York Plaza
 6 New York, NY 10004
 Telephone: (212) 859-8000
 Facsimile: (212) 859-4000
 Email: brad.eric.scheler@friedfrank.com
 bonnie.steingart@friedfrank.com
 7 Counsel for the Official Committee
 of Unsecured Creditors

8

9 BRETT A. AXELROD, ESQ.
 NEVADA BAR NO. 5859
 ANNE M. LORADITCH, ESQ.
 NEVADA BAR NO. 8164
FOX ROTHSCHILD, LLP
 3773 Howard Hughes Parkway
 Suite 500
 Las Vegas, Nevada 89169
 Telephone: (702) 262-6899
 Facsimile: (702) 597-5503
 Email: Baxelrod@foxrothschild.com
 Aloraditch@foxrothschild.com
 10 Counsel for the Official Committee
 of Unsecured Creditors

11 **UNITED STATES BANKRUPTCY COURT**

12 **DISTRICT OF NEVADA**

13 In re:

14 STATION CASINOS, INC.

- Affects this Debtor
- Affects all Debtors
- Affects Northern NV Acquisitions, LLC
- Affects Reno Land Holdings, LLC
- Affects River Central, LLC
- Affects Tropicana Station, LLC
- Affects FCP Holding, Inc.
- Affects FCP Voteco, LLC
- Affects Fertitta Partners LLC
- Affects FCP MezzCo Parent, LLC
- Affects FCP MezzCo Parent Sub, LLC
- Affects FCP MezzCo Borrower VII, LLC
- Affects FCP MezzCo Borrower VI, LLC
- Affects FCP MezzCo Borrower V, LLC
- Affects FCP MezzCo Borrower IV, LLC
- Affects FCP MezzCo Borrower III, LLC
- Affects FCP MezzCo Borrower II, LLC
- Affects FCP MezzCo Borrower I, LLC
- Affects FCP PropCo, LLC

15 Chapter 11

16 Case Nos. BK-N-09-52470-GWZ
 through BK-N-09-52487-GWZ

17 Jointly Administered Under
 BK-N-09-52477-GWZ

18

19 **SUPPLEMENTAL OBJECTION OF
 20 THE OFFICIAL COMMITTEE OF
 21 UNSECURED CREDITORS TO THE
 22 DEBTORS' (I) REVISED SECOND
 23 AMENDED AND RESTATED MASTER
 24 LEASE COMPROMISE AGREEMENT
 25 and (II) MOTION FOR ENTRY OF
 26 ORDER ESTABLISHING BIDDING
 27 PROCEDURES AND DEADLINES
 28 RELATING TO SALE PROCESS FOR
 SUBSTANTIALLY ALL OF THE
 ASSETS OF STATION CASINOS, INC.
 AND CERTAIN "OPCO"
 SUBSIDIARIES**

Hearing Date: May 4, 2010
 Hearing Time: 1:00 p.m.
 Place: 300 Booth Street
 Reno, Nevada 89509

1 **TO THE HONORABLE GREGG W. ZIVE AND ALL PARTIES IN INTEREST:**

2 The Official Committee of Unsecured Creditors (the “Committee”) appointed in the
 3 chapter 11 bankruptcy cases of the above-captioned debtors and debtors in possession, including
 4 Station Casinos, Inc. (“SCI”) and FCP PropCo, LLC (“PropCo” and with SCI, collectively, the
 5 “Debtors”), hereby respectfully submits this supplemental objection (the “Supplemental
 6 Objection”) to the Debtors’ *Notice of Submission of Revised Second Amended and Restated*
 7 *Master Lease Compromise Agreement In Connection with the Joint Motion of Station Casinos,*
 8 *Inc. and FCP PropCo, LLC Pursuant to 11 U.S.C. §§ 105(a), 363(b)(1), 365(d)(3) and*
 9 *365(d)(4)(B)(ii) and Fed. R. Bankr. P. 9019 for Entry of an Order Approving Second Amendment*
 10 *to Amended and Restated Master Lease Compromise Agreement* [Docket No. 1215] (the “Revised
 11 SMLCA”), and the Debtors’ *Notice of Submission of Revised Motion For Entry Of Order*
 12 *Establishing Bidding Procedures And Deadlines Relating To Sale Process For Substantially All*
 13 *Of The Assets Of Station Casinos, Inc. And Certain “Opcos” Subsidiaries* [Docket No. 12] (the
 14 “Revised Bid Procedures”, together with the Revised SMLCA, the “Revised Motions”). This
 15 Supplemental Objection is supported by the Supplemental Declaration of Bonnie Steingart (the
 16 “Steingart Supplement”) and the Request to Judicial Notice in Support of Supplemental Objection
 17 (the “RJN”) filed concurrently herewith.

18 **SUPPLEMENTAL OBJECTION**

19 This Supplemental Objection addresses the material changes made to the Second Master
 20 Lease Compromise Agreement and the Bidding Procedures in the Debtors’ Revised Motions as
 21 well as information obtained in ongoing discovery.

23 A. **Revisions to the Second Master Lease Compromise Agreement Expand Its**
 24 **Problematic Provisions**

25 (1) **If Approved, Revised SMLCA Would Order the Automatic Divestiture of**
 26 **SCI Assets upon a “Transfer Event”, without Court oversight and review.**

27 1. In addition to the PropCo Support Agreement, the Revised SMLCA now
 28 incorporates the OpCo Support Agreement as well. As a result, there are a number of “Transition

1 Events" and "Transfer Events" that are completely unrelated to the payment of rent and the other
 2 obligations in the original Master Lease. Thus, if the Court grants the Debtors' motion to approve
 3 the Revised SMLCA, regardless of whether this Court approves a disclosure statement or
 4 creditors vote or a plan is confirmed, the PropCo Lenders and Frank J. Fertitta and Lorenzo
 5 Fertitta (the "Fertittas") will be able to obtain the transition services and Excluded Assets that
 6 they covet.

7 2. Under the Revised SMLCA, the transfer of the all of the assets contained in Annex
 8 1 can occur upon a new event added to the Revised SMLCA, a "Transfer Event." Revised
 9 SMLCA at ¶ M(iv)(1)–(3). Such "Transfer Events" include: (i) "a person other than the proposed
 10 purchaser under the Joint Plan is selected by SCI as the successful bidder . . .," (ii) "the SCI
 11 prepetition lender voting class under the Joint Plan does not accept the Joint Plan and such Joint
 12 Plan is not confirmed pursuant to section 1129(b) of the Bankruptcy Code," and (iii) if (y) the
 13 Joint Plan is not confirmed and (z) any OpCo Lender "that is a party to a support agreement with
 14 SCI breaches a material obligations under such agreement and such breach is the primary cause of
 15 the Bankruptcy Court not entering an order approving (a) this Compromise, (b) the bidding
 16 procedures for SCI assets being proposed concurrently herewith, (c) the Debtors' motion to
 17 extend exclusivity, or (d) confirmation of the Joint Plan." See Revised SMLCA at ¶ M(iv).

18 3. The disposition of SCI's assets should only occur through an auction process that
 19 allows for all of SCI's assets to be put up for auction. Just as the concept of excluding assets
 20 from an auction is misplaced, so too is the automatic transfer of such assets outside of an auction
 21 process or a plan process where creditors can cast their vote on whether such a distribution should
 22 take place. Such a provision, which could only have been included in the Revised SMLCA to
 23 deprive SCI of the full value of its estates, is an impermissible mechanism to transfer assets and
 24 must not be countenanced by this Court.

25 4. To the extent that the Debtors continue to advance the meritless arguments that
 26 there is some alleged "benefit" to SCI because the asset transfers contemplated by the Master
 27 Lease will avoid litigation over the ownership of certain of these assets, such concern is easily
 28 addressed. [Debtors' Reply to Objections re: Debtors' Motion for Approval of Second Amended

1 and Restated Master Lease Compromise Agreement, [Docket No. 1323] at pgs.5-7]. Regardless
 2 of alleged “ownership” disputes, this argument fails for the obvious reason that through a section
 3 363 sale, such assets can be sold free and clear of liens, abrogating the need for ownerships of the
 4 assets to be determined.

5 **(2) “New” Asset Transfers or Excluded Assets**

6 5. As if the very concept of excluding assets from SCI’s auction is not troublesome
 7 enough, the Revised Motions incredibly keep adding assets to the list including, among others,

- 8 • Item 14. Wild Wild West trademarks and land. Under the Revised
 9 SMLCA, SCI is giving up all of its assets of Tropicana Station, Inc. and
 10 the “Wild Wild West Assemblage” to CV PropCo. This has no
 11 connection with the Master Lease or any other definitive legal document
 12 or obligation that the Debtors have disclosed and is a distribution that
 13 should either be done pursuant to a market-test auction or through a plan
 14 of reorganization. The Committee suspects that the Fertittas and the
 15 PropCo Lenders desire the entirety of the Wild Wild West land
 16 assemblage for two reasons – one, a portion is subject to the so-called
 17 “land loan,” whose lenders are, of course, the PropCo Lenders, and the
 18 PropCo lenders can now have the entirety of the assemblage subject to
 19 their interests; and two, while land values in Las Vegas still remain low
 20 (though it appears that there has been some positive growth in the last six
 21 months), the Wild Wild West assemblage has terrific long-term potential,
 22 given its size, location, and entitlements. Indeed, on information and
 23 belief, the assemblage is part of “Project V” or the Vista project, which the
 24 Debtors have continued to invest time and energy into postpetition.
- 25 • Item 8 – Primary Customer Database. Although customer lists are known
 26 to be extremely valuable casino assets, the Revised SMLCA, if approved,
 27 would require SCI to give its customer lists to PropCo which would then
 28 become a competitor for the “locals market” to PropCo or Fertitta-PropCo
 for inadequate consideration.

- 1 • Item 15. Net Working Capital. While the original SMLCA filed on April
2 7, 2010 (the “Original SMLCA”) [Docket No. 1179] provided that PropCo
3 would purchase accounts receivable and deposits at “a purchase price” to
4 be determined, under the Revised SMLCA, PropCo is now receiving
5 them, net of liabilities.
- 6 • Item 17. Purchase Price. Under the Original SMLCA, the purchase price
7 of the transfers in Annex 1 would be at a mutually agreed upon value and
8 form of consideration or, if there was no mutual agreement, as determined
9 by the Bankruptcy Court. Under the Revised SMLCA, however, if
10 PropCo receives the assets of Annex 1, the price will be \$35 million. The
11 only support for such figure, although even at the lowest point of that
12 range, is the Alvarez & Marsal LLC report filed on April 28, 2010 (the
13 “A&M Report”) and conducted by the OpCo Lenders. Notwithstanding
14 such assertions, the A&M Report does not include in its valuation all of
15 the assets that would be purchased by the \$35 million price set forth in
16 Revised SMLCA.
- 17 • In the reply papers, the Debtors and the PropCo Lenders appear to suggest
18 that the trademarks associated with the four casinos operated on the
19 PropCo land are of de minimis value. As demonstrated in the exhibits
20 attached to the RJN, SCI owns such trademarks, has repeatedly sought to
21 protect its substantial investment, and the substantial value of such
22 investment, in the trademarks associated with those four casinos. Such
23 efforts have occurred postpetition, and have been supported by a
24 declaration of Mr. Haskins – a PropCo director.
- 25 • GV Ranch Station Inc.
- 26 • Aliante Station LLC.

27 **(3) The Texas Station Put Should Not Be Included in the Revised SMLCA**

28 6. In the Revised SMLCA, the Debtors added a provision that states that the Texas
Station landlord, who are the Fertittas’ parents, would release an alleged “put” right under the

1 Texas Station lease but only if the Joint Plan is confirmed and becomes effective (envisioning that
 2 the Fertitta/PropCo entity is the successful bidder for SCI's assets at auction). [Revised SMLCA,
 3 at ¶ M(x)]. However, paragraph M(x) states that if the Fertitta/PropCo entity is not the successful
 4 bidder for SCI's assets, the price of settling the Texas Station Put option will be fixed at \$75
 5 million, payable at closing of the SCI sale.

6 7. There is no written agreement concerning the "put" right, including in the April
 7 19, 2010 filings. The Texas Station Put was not mentioned in any motions or declarations filed
 8 on April 7, 2010. It is not mentioned in the proposed plan and disclosure statement filed in
 9 March. It is not even mentioned in the first-day declaration of Mr. Friel filed last year (which
 10 otherwise describes the lease arrangement). While touted as a really great deal for any potential
 11 third party purchaser, this "great deal" need not be reached at this point. Third party purchasers
 12 can resolve the issue of the Texas Station Put in a myriad of ways. At least one option to address
 13 the Texas Station Put is to have Texas Station file for bankruptcy, where such a provision would
 14 be unenforceable and can be addressed through the bankruptcy process.¹ Indeed, many lessors,
 15 when faced with a tenant in bankruptcy and an out-of-market lease, will renegotiate with the
 16 tenant so they can continue to have a stream of income rather than have no payments made on the
 17 lease.

18 **B. The Revised Bidding Procedures Should Be Modified so that a Fair Auction Can**
 19 **Take Place**

20 8. In order to provide for an auction process that can maximize value for SCI's
 21 estates, the Committee has prepared a markup of the Revised Bidding Procedures, attached as
 22 Exhibit A to the Steingart Declaration. While the Committee's primary objections to the Bidding
 23 Procedures were described in its prior objection, the central themes of the attached mark-up
 24 include (i) providing for a Sales Examiner to ensure a fair auction process, (ii) not excluding any
 25 of SCI's assets from the auction, and (iii) ensuring that adequate time exists for potential bidders

26 ¹ The Declaration of Richard Haskins contemplates that additional chapter 11 filings may occur. See
 27 *Declaration of Richard J. Haskins in Support of Debtors' (a) Motion for Entry of Order Establishing Bidding*
*28 *Procedures and Deadlines Relating to Sale Process for Substantially All of the Assets of Station Casinos, Inc. and**
Certain "Opcos" Subsidiaries; and (b) Reply to Objections Re: Debtors' Motion for Approval of Second Amended
and Restated Master Lease Compromise Amendment, at ¶ 16 [Docket No. 1325].

1 to submit their letters of intent. **Just to be clear, the Committee has no qualms with the**
 2 **Stalking Horse Bid, just with the embedded necessary depressing effect the Excluded Assets**
 3 **component has on a real contest for the assets.**

4 9. The replies filed by the Debtors and the lenders seem to trump up all sorts of
 5 excuses about the auction, including why excluding assets from the auction will make for a
 6 smoother auction process, why Boyd's actions are nefarious at best, how the potential
 7 involvement of strategic bidders will or will not be affected, and so forth. But all of these
 8 arguments fall flat given the very nature of a competitive auction process, where each bidder
 9 comes into the auction room with its own set of strategies and goals for the auction. Such
 10 contested and active bidding process can only be viewed positively by this Court.

11 C. **Insider Conflicts Remain Despite the Debtors' Protestations to the Contrary**

12 10. The fact that the Debtors believe that they have been able to "deftly ensure that
 13 conflicts of interest are avoided" in reaching their deal turns well-established principles of
 14 corporate governance on its head. [Docket No. 1322, ¶35.] Discovery has confirmed that
 15 individuals on both sides of OpCo and PropCo were actively involved in the process and did not,
 16 in fact, recuse themselves. Richard Haskins testified at his deposition that Frank J. Fertitta III and
 17 Lorenzo Fertitta voted for the Debtors to enter into the SMLCA and the Bidding Procedures in
 18 spite of the fact that their Stalking Horse Bid and agreements with respect to New PropCo with
 19 the Mortgage Lenders were significant elements of both agreements. Haskins Deposition Tr. at
 20 14:18-18:2; 107:6-110:24 (Apr. 27, 2010). The inherent contradiction in the Fertittas' actively
 21 voting on the Debtors' actions, on the one hand, and benefiting from the "compromise" reached,
 22 on the other, is just the tip of the iceberg when it comes to how these cases are fraught with
 23 insider conflicts, and highlights how the Fertittas are on every side of the deal. Indeed, despite
 24 the testimony of Mr. Haskins, who is an officer of SCI and a director of PropCo, that he was not
 25 conflicted, another PropCo board member testified that Haskins was present at PropCo board
 26 meetings when the Revised SMLCA and the Bidding Procedures were discussed and even voted
 27 affirmatively as a director of PropCo on both matters while, during the same period, he was
 28 negotiating such matters as an officer of SCI. Compare Haskins Deposition Tr. at 132:2-133:1

1 ("Once we started on the road of a Master Lease Compromise, I . . . effectively recused myself on
 2 the PropCo side"),² with Robert Kors Deposition Tr. at 94:7-97:5 (Apr. 30, 2010) (Mr. Kors
 3 testified that Mr. Haskins was present and participated at the PropCo board meeting to consider
 4 the Revised SMLCA and voted for it as a PropCo director).³ All this just serves to highlight how
 5 the independence of SCI must be questioned at every turn.

6 Accordingly, for the foregoing reasons, the Committee respectfully requests that the Court
 7 deny the Revised Motions and grant such other relief it deems appropriate.

8 DATED this 3rd day of May 2010.

9 Respectfully submitted,
 10 **FRIED, FRANK, HARRIS,
 SHRIVER & JACOBSON LLP**

11 By s/ Bonnie Steingart
 12 BRAD ERIC SCHELER (SBN BS-0397)
 13 BONNIE STEINGART (SBN BS-8004)
 14 One New York Plaza
 New York, New York 10004
 Telephone: (212) 859-8000

15 **FOX ROTHSCHILD LLP**
 16 BRETT A. AXELROD (SBN 5859)
 17 ANNE M. LORADITCH (SBN 8164)
 18 3800 Howard Hughes Parkway, Suite 500
 Las Vegas, Nevada 89169
 Telephone: (702) 262-6899

19 -and-

20 **QUINN EMANUEL URQUART
 & SULLIVAN, LLP**
 21 ERIC D. WINSTON (SBN 202407)
 22 JEANINE M. ZALDUENDO (SBN 243374)
 23 865 South Figueroa Street, 10th Floor
 Los Angeles, California 90017
 Telephone: (213) 443-3000

24
 25 *Counsel for the Official Committee
 26 of Unsecured Creditors*

27
 28 ² Excerpts from the deposition of Richard Haskins are attached hereto as Exhibit B to the Steingart Declaration.

³ Excerpts from the deposition of Robert Kors are attached hereto as Exhibit C to the Steingart Declaration.